



SERVICE DATE – JULY 1, 2010

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**SURFACE TRANSPORTATION BOARD
Washington, DC 20423**

Environmental Notice: Request for Public Comment

Docket No. FD 35348

**CSX TRANSPORTATION, INC. AND DELAWARE AND HUDSON RAILWAY
COMPANY, INC.—JOINT USE AGREEMENT**

The purpose of this Environmental Notice is to invite comment on the need for further environmental review of CSX Transportation, Inc.'s (CSXT), and Delaware and Hudson Railway Company, Inc.'s (D&H) (together, applicants) Joint Use Agreement (Joint Use Agreement).¹ Applicants' conclude in their application that their proposal does not require environmental documentation under the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347 (NEPA) because there would be no operational changes that would exceed the Surface Transportation Board's (Board) thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5), and there would be no action that would normally require environmental documentation. Furthermore, applicants conclude that there is no need for historic review under section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 (NHPA). See the map of the lines affected by the transaction in Attachment 1.

Briefly summarized, applicants anticipate only small changes in operations as a result of the proposed joint use agreement. However, applicants' operating plan, which was submitted with their application, projected traffic increases, on a small segment of line that would move joint use traffic, that would trigger the Board's thresholds for

¹ See Docket No. 35348. The entire text of the Application is posted on the Board's website. The Application may be viewed by going to <http://www.stb.dot.gov> and clicking on the box labeled "Filings." The Application is listed April 27, 2010, and identified by Filing ID No. 226899.

environmental review in nonattainment areas.² The thresholds differ depending on whether a rail line segment is in an area designated as “attainment” or “nonattainment” with the National Ambient Air Quality Standards established under the CAA. To clarify anticipated traffic movements over the joint use lines, applicants submitted a supplement to their operating plan in which they explained that the joint use agreement actually contemplates fewer train movements than set forth in their operating plan. Moreover, operational changes would, in fact, not trigger the Board’s thresholds in the nonattainment area.

Applicants explain that the joint use arrangement would improve customer service in New York, and attract additional freight to rail that currently moves via truck. According to applicants, the transaction would also generate beneficial regional environmental impacts by reducing train and locomotive miles traveled and diverting freight from motor carriers to more fuel-efficient rail service.

The Board’s Section of Environmental Analysis (SEA), which is responsible for conducting the environmental review on behalf of the Board, is distributing this Environmental Notice to certain agencies and communities, as well as all of the parties on the Board’s service list to encourage public review and comment on the conclusion of the applicants that the transaction would not have a significant effect on the human environment, and does not require further environmental or historic analysis under NEPA, the Board’s own environmental rules or NHPA. SEA is providing a 20-day period for all potentially interested parties to submit any comments on potential environmental issues that they might have. **Comments are due by July 21, 2010.**

Based on SEA’s consideration of all timely comments and its own independent review of all available environmental information, SEA will recommend to the Board whether there is a need for formal environmental review in this case. The Board will then determine whether applicants’ proposal warrants further environmental review, or, alternatively, whether no further environmental analysis is necessary.

SUPPLEMENTARY INFORMATION

The Proposed Transaction

The Board has accepted for consideration the application filed on April 27, 2010, by applicants, which seeks Board approval under 49 U.S.C. 11321-26 for applicants to commence operations pursuant to a Joint Use Agreement. The proposed transaction involves the joint use of certain rail lines owned by CSXT or D&H, located between Rouses Point Junction, N.Y., and Fresh Pond Junction, N.Y. consisting of 3 segments: the Saratoga Springs-Rouses Point Segment, the Albany-Saratoga Springs Segment, and the

² A nonattainment area is any area that does not meet, or that contributes to ambient air quality in a nearby area that does not meet, the ambient air quality standards for the pollutant under the Clean Air Act 42 U.S.C. §§ 7401-7671 (CAA).

Albany-Fresh Pond Segment (collectively, Joint Use Lines). Applicants' application explain that the joint use rights granted to D&H and CSXT in the Joint Use Agreement are for overhead traffic only. Pursuant to the Joint Use Agreement, D&H has granted CSXT the right to use, jointly with D&H, the Saratoga Springs-Rouses Point Segment and the Albany-Saratoga Springs Segment. CSXT has reciprocally granted to D&H the right to use, jointly with CSXT, the Albany-Fresh Pond Segment. Applicants state that the fundamental purpose of the proposed transaction is to address certain inefficiencies in the current north-south operations of both CSXT and D&H in New York.

Under the Joint Use Agreement, applicants state that CSXT would perform operations over the Albany-Fresh Pond Segment with its own trains and crews, and D&H's traffic volumes would be added to CSXT's larger trains, thereby reducing the number of freight carriers, and train movement over the Albany-New York City corridor, which is also used by Amtrak and Metro-North Commuter Railroad commuter trains.

With regard to proposed traffic movements, applicants assert in their application that the proposed Joint Use Agreement, if implemented, would result in 2 restrictions on the movement of traffic over the Albany-Saratoga Springs Segment and the Saratoga Springs-Rouses Point Segment: (1) No more than 16 trains (8 north bound trains plus 8 south bound trains) per week carrying CSXT Joint Use traffic, and (2) no more than 3 trains per day carrying CSXT Joint Use traffic. Also, as part of the Joint Use Agreement, D&H would deliver Joint Use traffic to CSXT at Kenwood Yard, Oak Point Yard, or Fresh Pond for movement in CSXT trains. Applicants state that no notable increases in rail yard activity would likely result from these movements. Applicants further state that D&H currently operates 2 trains 2 days per week on Albany-Fresh Pond Segment, and under the Joint Use Agreement, this traffic would continue to move only over this segment.

Moreover, applicants state that, under the proposed transaction, there would be no change in service to any local industry currently served by CSXT that may be affected by this transaction.

Discontinuances/Abandonments

Applicants have not proposed, as part of this transaction, the abandonment of, or discontinuance of service over, any rail lines. According to applicants, they do not have any plans at this time to abandon any lines involved in the proposed transaction.

The Surface Transportation Board's Regulatory Review Process

The Board is an independent federal regulatory agency with jurisdiction over railroad acquisitions and operations, including joint ownership in or joint use of, a railroad line (and terminals incidental to it) owned or operated by another rail carrier. When 2 or more rail carriers seek joint use of a rail line they must obtain prior STB approval under 49 U.S.C. § 11323 and 49 C.F.R. 1180.

It appears that portions of the proposed transaction essentially resemble haulage arrangements, which, standing alone, generally would not need Board authority. However, the overall transaction, which includes trackage rights over the Albany-Saratoga Springs Segment, has been submitted to the Board as a joint use agreement, over which the Board has jurisdiction under 49 U.S.C. § 11323(a)(6).

The National Environmental Policy Act and National Historic Preservation Act

NEPA generally requires federal agencies to consider “to the fullest extent possible” environmental consequences “in every recommendation or report on major federal actions significantly affecting the quality of the human environment.”³ 42 U.S.C. 4332(2)(C). Regulations governing implementation of this broad mandate have been promulgated by the Council on Environmental Quality (CEQ), at 40 CFR 1500-1508, and by the Board, at 49 CFR 1105.

Under the CEQ and Board regulations, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the agency to prepare an full Environmental Impact Statement (EIS). 40 CFR 1501.4(a)(1); 49 CFR 1105.4(f), 1105.6(a). Actions that may or may not have a significant environmental impact ordinarily require the agency to prepare a more limited Environmental Assessment (EA). 40 CFR 1501.4(c); 49 CFR 1105.4(d), 1105.6(b). Finally, actions whose environmental effects are ordinarily insignificant may be “categorically excluded” from NEPA review across the board, without a case-by case review. 40 CFR 1500.4(p), 1501.4(a)(2), 1508.4; 49 CFR 1105.6(c).

In its environmental rules, the Board has promulgated various categorical exclusions. As pertinent to this transaction, the proposed a joint use agreement⁴ (49 C.F.R. 1105.6(c)(4) is a classification of action that normally requires no environmental review if certain thresholds would not be exceeded.⁵ However, if

³ The human environment encompasses the following areas: physical (geology, soils, air, water), biological (plants, animals), social (communities, economics), and cultural (archaeological and historic resources).

⁴ The transaction includes trackage rights over the Albany-Saratoga Springs Segment.

⁵ The thresholds differ depending on whether a rail line segment is in an area designated as “attainment” or “nonattainment” with the National Ambient Air Quality Standards established under the CAA. For rail lines located in attainment areas, environmental documentation normally will be prepared if the proposed action would result in: (1) an increase of at least 8 trains per day; (2) an increase in rail traffic of at least 100 percent (measured in annual gross ton miles); or (3) an increase in carload activity at rail yards of at least 100 percent. 49 C.F.R. § 1105.7(e)(5)(i). For rail lines in
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transaction-related changes in rail operations are projected to exceed the thresholds for review, then SEA, on behalf of the Board, would ordinarily prepare either an EA or an EIS addressing the effects of the transaction. And, even when the Board's presumptive thresholds for environmental analysis are met, the Board may reclassify a particular transaction or modify the requirement that an EIS or EA be prepared, if the railroad applicant demonstrates that the proposed transaction has no potential for significant environmental effects. 49 C.F.R. § 1105.6(d).

The Board's regulations also provide that historic review normally is not required for transactions where there will be no significant change in operations, and properties 50 years old and older will not be affected. 49 C.F.R. § 1105.8.

Applicants' Support for Their Conclusion that No Formal Environmental or Historic Review is Required

Applicants submitted a determination in their application that no environmental documentation, under the NEPA is required because there would be no operational changes that would exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5), and there would be no action that would normally require environmental documentation. Further, applicants contend that there is no need for historic review under section 106 of NHPA because neither CSXT nor D&H proposes to abandon any rail line or other rail facility or structure. Applicants further state that there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older.

SEA reviewed the applicants' projected train numbers as outlined in their operating plan, which explained that the traffic density on the lines proposed for joint operations could move up to 16 trains per week and up to 3 trains per day over the Albany-Saratoga Springs Segment and the Saratoga Springs-Rouses Point Segment.

SEA contacted the applicants' representative by telephone and requested clarification regarding the actual number of new trains that would move through the Albany-Saratoga Springs nonattainment area under the Joint Use Agreement. SEA also requested further explanation to support their conclusion that the transaction does not

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nonattainment areas, environmental documentation typically is required when the proposed action would result in: (1) an increase of at least 3 trains per day; (2) an increase in rail traffic of at least 50 percent (measured in annual gross ton miles); or (3) an increase in carload activity at rail yards of at least 20 percent. 49 C.F.R. § 1105.7(e)(5)(ii). An attainment area is an area considered to have air quality as good as, or better than, the national ambient air quality standards as defined in the CAA. A nonattainment area is any area that does not meet, or that contributes to ambient air quality in a nearby area that does not meet, the ambient air quality standards for the pollutant under the CAA.

exceed the Board's threshold in the Albany-Saratoga Spring air quality nonattainment area, and does not warrant environmental and historic documentation.

SEA explained to the applicants' representative that Albany and Saratoga Springs is in nonattainment status under the CAA, and that the Board's thresholds for environmental analysis with regard to potentially significant air quality impact depend on the attainment status of air quality in the affected region. Therefore, SEA explained, the following thresholds apply for determining the level of environmental review, if warranted, in this transaction:

- An increase of 3 trains per day on any segment of rail line
- An increase in rail traffic of 50 percent (measured in annual gross ton-miles (GTM) annually)
- An increase in rail yard activity of at least 20 percent (measured by carload activity per day)

In a letter dated May 11, 2010, applicants responded to SEA's request for clarification and additional information. Applicants stated that the proposed transaction, as set forth in their application, limits the number of trains that CSXT may operate between Albany and Rouses Point Junction, which includes the Albany-Saratoga Springs nonattainment area, to a maximum of 3 trains per day. Applicants explained that, on a daily basis, the operating plan and the Joint Use Agreement contemplate that applicants would actually operate only 2 trains (1 in each direction) per day carrying CSXT traffic between Albany –Saratoga Springs and Saratoga – Rouses Point, even though the Joint Use Agreement allows the movement of up to 3 trains per day and 16 trains per week. Applicants support their 2 trains per day traffic projection with the explanation that CSXT currently operates 2 trains per day over its Massena Line, and that, under the Joint Use Agreement, the traffic currently on the Massena Line consisting of 2 trains per day would, under the proposed transaction, operate between Albany –Saratoga Springs and Saratoga – Rouses Point.

Applicants also offered in support of their transaction, that CSXT's ability to utilize the Saratoga Springs - Rouses Point Segment under the Joint Use Agreement will reduce one-way transit miles between Selkirk and Montreal by 142 miles (the Albany – Saratoga Springs and Saratoga – Rouses Point segments are located on this line). CSXT estimates that use of the Joint Use Lines will save it approximately 442,000,000 GTMs annually compared to using the current Massena Line. By reducing GTMs, CSXT contends that it expects to achieve beneficial regional environmental impacts from reducing train and locomotive miles, and diverting freight from motor carriers to more fuel-efficient rail service.

Applicants further explained that, based on current traffic levels, trains carrying CSXT joint use traffic between Albany and Rouses Point Junction would be, on average, approximately 3,300 feet in length, which would allow substantial room for future traffic growth without adding a third train, in the reasonably foreseeable future, if the transaction is approved. According to applicant, the Joint Use Agreement would allow trains of 8,000 feet in length.

In sum, in their letter of May 11, 2010, applicants stated that based on the information provided in their application and supplemental information, the traffic movements described above would not result in operational changes that exceed the Board's environmental thresholds established at 49 CFR 1105.7(e)(4) or (5), therefore, no environmental documentation is required. Further, applicants contend that there is no need for historic review under section 106 of the NHPA because neither CSXT nor D&H proposes to abandon any rail line or other rail facility or structure. Applicants also state that there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older.

Public Comment

To afford the public an opportunity to review and comment on applicants' conclusion that the transaction would not result in significant environmental impacts and does not require environmental analysis under NEPA or historic review under NHPA, SEA is mailing copies of this Environmental Notice to certain communities and federal, state, and local agencies, as well as to parties on the Board's service list for these proceedings, to announce that the Board is providing a 20-day period for potentially interested parties to submit any comments on potential environmental matters that they might have. **Comments are due by July 21, 2010.**

SEA's purpose in providing this information to the public is to encourage public involvement and consultation on any potentially significant environmental impacts related to the proposed transaction so that SEA, and ultimately the Board, can consider public concerns and issues in determining whether further environmental analysis is needed.

Based on SEA's consideration of all timely comments and its own independent review of all available information, SEA will recommend to the Board whether there is a need for the preparation of environmental or historic documentation in this case. The Board will then determine whether to issue a finding of no significant impact or whether further environmental or historic documentation should be prepared.

If you wish to submit written environmental comments, please provide SEA with a signed original and 10 copies. Environmental comments may also be filed electronically on the Board's web site, www.stb.dot.gov, by clicking on the E-FILING link. Please refer to Docket No. 35348 in all correspondence, including e-filings, to the Board in this proceeding. Written comments must be postmarked by July 21, 2010 and should be sent to SEA at the following address:

Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001
Please write the following in the lower left-hand corner of the envelope:
Attention: Phillis Johnson-Ball
Environmental Filing

Any questions or requests for additional information about the Board's environmental review process should be directed to Phillis Johnson-Ball of the Board's Section of Environmental Analysis at (202) 245-0304.

Date made available to the public: July 1, 2010

Comment due date: July 21, 2010.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Attachments (2)

Attachment 1

- A Map of the Joint Use Line.

Attachment 2

- Applicants Response Letter of May 11, 2010.